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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

U 39 E

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
OPENING COMMENTS ON APRIL 2014 STAFF
PROPOSAL FOR RPS PROCUREMENT REFORM**

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In accordance with the schedule set forth in the Administrative Law Judge’s Ruling Issuing Staff Proposal to Reform Procurement Review Process for the Renewables Portfolio Standard (“RPS”) Program, issued on April 8, 2014 in this proceeding (the “ALJ Ruling”), Pacific Gas and Electric Company (“PG&E”) provides the following opening comments.

I. INTRODUCTION

PG&E’s comments focus on the RPS Procurement Reform Staff Proposal’s (“Staff Proposal”) stated goals of streamlining the RPS contract review process and increasing the transparency and efficiency of the California Public Utilities Commission’s (the “Commission”) review of RPS procurement.^{1/} PG&E continues to support these goals and the additional objective of increasing market certainty set forth in the Assigned Commissioner’s Ruling that initiated this reform proceeding.^{2/} However, PG&E remains concerned that the Staff Proposal, without significant modification, would either not further the stated goals or would only do so while creating unintended consequences or excessive customer costs. Moreover, determining the filing process and data adequacy for RPS contracts ahead of the Commission’s planned review of

^{1/} Staff Proposal at 8.

^{2/} *Second Assigned Commissioner’s Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals*, issued in R.11-05-005 on October 5, 2012, at 2.

the Least-Cost, Best-Fit (“LCBF”) methodology may be premature, as any revisions to the LCBF criteria may inform what type of data is needed for assessing RPS procurement. PG&E looks forward to continue working with the Commission and other stakeholders to improve the RPS procurement process in ways that preserve the many aspects of the RPS Program that are functioning well today.

II. PROPOSED ENVIRONMENTAL DATA ADEQUACY REQUIREMENTS ARE UNNECESSARY, MAY NEGATIVELY IMPACT PROJECT VIABILITY AND IOUS’ ABILITY TO CONDUCT DUE DILIGENCE, AND ARE UNDULY BURDENSOME IN LIGHT OF EXISTING PERMITTING PROCESSES.

Section 4.1 of the Staff Proposal includes new data adequacy requirements that would apply to all information submitted to the commission by an investor-owned utility (“IOU”).^{3/} In addition to the data required by existing templates for the RPS shortlist and individual PPA advice letters, which PG&E does not oppose, the Staff Proposal would require a “permitting plan,” including five specific types of data: (1) a GIS file of the project boundaries; (2) a list of all environmental permits and discretionary approvals required, the status of these permits, and a schedule of permitting; (3) written documentation of initial reviews, consultations, and/or records of outreach to or meetings with applicable permitting agencies, including any comments or recommendations or correspondence from relevant permitting agencies; (4) all applicable reports that an agency has and will rely on to complete preliminary studies under applicable environmental review laws, and the adopted preliminary studies of agencies under those environmental review laws; and (5) any “known” issues that may put the permitting process at risk, along with up and approach/plan for resolving the identified issues and minimizing any delays.^{4/} All of this information would have to be provided not only for the generation project under consideration, but also for any related interconnection or other facilities.^{5/}

^{3/} ALJ Ruling at 8.

^{4/} *Id.* at 9-10.

^{5/} *Id.* at 10.

All of this new environmental data would be required to be disclosed in the public section of advice letters,^{6/} and the Staff Proposal would require that an IOU check the data for accuracy.^{7/}

The Staff Proposal asks parties to respond to the appropriateness of these requirements for purposes of evaluating a project's viability in the bid solicitation process or PPA review process.^{8/} The compound nature of this question, in combination with the requirement in the ruling that the environmental data be provided for "all RPS PPA-related projects"^{9/} suggests that these environmental data requirements are intended to apply not only to executed PPAs, but also to all or some subset of bids detailed in an IOU's RPS solicitation shortlist report.

PG&E does not oppose providing GIS files and permitting status and schedules associated with executed PPAs, so long as these data are not categorically made public and may be submitted confidentially consistent with the Commission's existing confidentiality rulings and orders.^{10/} However, the remaining new environmental data requirements would result in little if any additional benefit to the Commission or parties and are so burdensome as to be practically unworkable. PG&E has concerns related to the scope, purpose, and process of the proposal.

A. Additional Environmental Due Diligence is Unnecessary Given the History of RPS Project Permitting.

The Staff Proposal's only justification for proposing these highly burdensome new data requirements is "to provide an extra step of due diligence to assess the overall viability of an RPS eligible process [sic]."^{11/} While the Staff Proposal states that the requirements are "not

^{6/} *Id.* at 9.

^{7/} *Id.* at 8.

^{8/} *Id.* at 10.

^{9/} *Id.* at 9.

^{10/} To the extent that the Staff Proposal means to apply the environmental data requirements to all bids in an RPS Solicitation, PG&E notes that it does not currently receive detailed permitting schedules and status tables in its bid packages.

^{11/} *Id.* at 9.

intended to be additional permitting requirements or prejudice the permitting process,”^{12/} a decision to reject cost recovery for a PPA based upon this review of environmental data would almost certainly amount to prejudging the lead agency’s permitting process by rejecting a project on environmental grounds. If the Commission does not intend to use the environmental data to decide on whether or not to approve a PPA, then it would appear that the data requirements have no purpose. Thus, the Staff Proposal, by delving into the substance of the environmental review process rather than limiting the Commission’s review to the status and final outcomes of that process, would either improperly interpose the Commission in the environmental review process and usurp the authority of land use agencies or impose damaging and burdensome requirements on developers and IOUs with no clear benefit.

Fortunately, the general track record of RPS projects does not require the Commission to take the extraordinary step of second-guessing the land use agencies. As PG&E has noted in past RPS Procurement Plans, project success rates have improved significantly since the beginning of the RPS program. PG&E continues to see improved success in projects’ ability to meet major development milestones. Moreover, of the RPS PPAs in PG&E’s portfolio that have been terminated, environmental concerns have not been the primary driver behind project failure. Based on survey questionnaires provided by developers in May 2013, less than 15% of all RPS PPAs in PG&E’s portfolio that had been terminated since the inception of the RPS Program were terminated primarily because of environmental permitting challenges. In fact, of all projects in PG&E’s portfolio terminated since the beginning of the RPS program, fully one-third had reached an advanced stage of the California Environmental Quality Act (“CEQA”) review process before they were terminated. This data and PG&E’s experience indicate that interconnection, financing, and other non-environmental issues have been a more significant driver of project failure than the failure to obtain environmental permits.

^{12/} *Ibid.*

Moreover, PG&E's existing project viability analysis, which includes use of the Commission-approved Project Viability Calculator, already incorporates how far along a developer is in the permitting timeline. This existing process takes into account the fact that IOUs, their customers, and independent power producers are fully aligned in not wanting to pursue RPS projects that cause significant environmental impacts such that they are not able to be permitted or can only be permitted at a cost that makes the project unviable. As a project gets further along in the permitting process, the uncertainty around environmental impacts decreases. A developer will not reasonably continue to pursue development of a project that is unviable, since even with a PPA, the developer can only recover its costs if the project comes online. Thus, the existing project viability criteria adequately and appropriately focus on whether a developer has received necessary environmental permits and, if not, where the developer is in the environmental review process. The proposed "extra step" of due diligence into the substance of the environmental review process is completely unnecessary.

B. The Environmental Data Requirements Could Have Negative and Unintended Consequences on Viability and the Commission's Ability to Assess Viability.

The Staff Proposal would require that an IOU request from bidders or counterparties and then make public an enormous volume of siting and permitting information that developers generally consider highly sensitive and confidential. For example, the Staff Proposal would require IOUs to provide developers' internal documentation of meetings and informal consultations with agencies regarding the project.^{13/} It would also require an IOU to ask a developer to identify permitting risks and how the developer plans to mitigate those risks and then to make those proprietary assessments public in the advice letter filing.^{14/}

^{13/} *Id.* at 9.

^{14/} *Id.* at 9-10.

The Staff Proposal can result in two undesirable outcomes.^{15/} First, a developer may comply fully with the IOU's request, in which case potential opponents of the development (*e.g.*, neighboring landowners or special interests seeking leverage against the developer for other purposes) could use the developer's own internal risk assessment as a roadmap to opposing the project, with the added benefit of knowing the developer's own strategy to addressing those risks. Providing such information to project opponents would tend to reduce the viability of a project that may otherwise meet all environmental requirements, if for no other reason than it could make litigating against opponents too expensive to justify the development.

Second, developers may oppose and resist IOU requests to seek confidential project development status information for fear that such information will simply be made public with negative consequences to the project. As a result, developers may opt to provide more general responses to IOU requests for information and provide only information that has already been made public in other forums. The consequence of this outcome will be to severely limit the usefulness of the project status information that IOUs receive, and therefore to similarly limit the ability of the Commission to review project development status and viability. Contrary to its intent, the Staff Proposal may actually result in less useful and accurate information being provided to the Commission.

C. The Environmental Data Requirements Are Duplicative of Work by Other Agencies and May Usurp Those Agencies' Permitting Role.

Some of the new environmental data requirements are likely to generate massive volumes of data and technical documents that the Commission staff would need to review and assess in tandem with the relevant permitting agencies. Environmental documents are notoriously lengthy, and so are the reams of technical reports that underlie such assessments. The administrative burden and wastefulness of including such massive documents in filings is

^{15/} PG&E would not oppose the data requirements listed under subsections (a) and (b) of the Staff Proposal if the data were allowed to be submitted confidentially pursuant to Decision ("D.")06-06-066 or General Order 66-C.

unnecessary and therefore inappropriate given that the public land use agencies leading the environmental reviews of RPS projects provide adequate avenues and opportunities for the public and other agencies like the Commission to access, review, and comment on such documents. The State also maintains an information clearinghouse for documents prepared pursuant to the CEQA for this purpose. Given the public availability of some of the documentation sought by the Staff Proposal, the requirement to provide it again in advice letters is duplicative, wasteful, and unnecessary.

Similarly, the environmental data requirements appear to position the Commission to review the internal permitting assessments and to second-guess the evaluations conducted by the land use agencies. Because this due diligence would merely duplicate, if not usurp, the functions of the designated permitting agencies, there is no reasonable justification for the significant burdens the requirements would place on both the IOUs and the developers.

D. The Staff Proposal's Intent to Review the Environmental Impacts of Interconnection Facilities to be Constructed by IOUs Unreasonably Duplicates and May Conflict with G.O. 131-D.

The Commission's process for considering the permitting requirements, including environmental review under CEQA, for new utility infrastructure meant to interconnect new RPS generation is guided by the Commission's General Order 131-D and related documents, including the Commission's guidance for preparing a Proponent's Environmental Assessment.^{16/} These existing permitting procedures are well-established and should not be preempted or duplicated by the Staff Proposal's requirement that an IOU would need to include a broad array of environmental information related to new utility infrastructure related to an RPS Project during the advice letter process.

^{16/} CPUC, Proponent's Environmental Assessment Checklist – Transmission, 2008 (available at <http://www.cpuc.ca.gov/NR/rdonlyres/E2456E99-83F0-469C-AC83-1A123B3C3383/0/CPUCPEAChecklistwithGHG.pdf>).

E. IOUs Cannot Reasonably Be Expected To Verify the Accuracy of the Environmental Data Requirements.

The environmental data requirements proposed by Staff involve data that are highly technical, necessarily dependent on expert judgment, and are case-specific to each RPS project. IOUs cannot reasonably be expected to “check” all of this data to verify its accuracy, as proposed by Staff. Even if the Staff Proposal were otherwise adopted, which it should not be for the reasons set forth above, an IOU cannot be expected to do anything other than act as a conduit between the Commission and a bidder or counterparty and to ensure that the data is not intentionally and materially altered in the process of receipt and submission. If an IOU were to be expected to generate its proprietary and internal assessment of the accuracy of all the environmental review documents associated with executed PPAs, much less all projects bid into an IOU’s solicitation, the undertaking would require a massive cadre of environmental experts to essentially duplicate the work already done once by the developers’ own consultants and then again by the lead land use agency and its consultants. Similarly, the Commission may have to hire its own consultants or set aside significant internal resources to independently review the IOUs’ assessments. The high cost to an IOUs’ customers of creating such a large environmental review effort cannot be justified given the high level of duplication with the work of the appropriate land use agencies and the lack of any reasonable purpose for such a “shadow permitting” effort in the RPS procurement process.

III. A 60-DAY TIMELINE FOR SUBMISSION OF IOU SHORTLISTS IS UNNECESSARY AND MAY COMPROMISE THE SHORTLISTING PROCESS.

The Staff Proposal would impose a new 60-day deadline for submission of proposed IOU shortlists in the annual RPS solicitation process via a Tier 3 advice letter.^{17/} The Staff Proposal gives no justification for the need to rush the shortlisting process, and PG&E sees no compelling reason to do so. Particularly given the Commission’s desire to focus more attention at the front-end of the solicitation process, it is in the best interests of all parties that the IOUs, their

^{17/} *Id.* at 11.

respective Procurement Review Groups (“PRG”), the Independent Evaluators (“IE”), and Commission staff have adequate time to review bids thoroughly prior to submission of the shortlists.

In PG&E’s experience, 60 days are not enough time to carefully vet the large volume of bids that have been received in recent years. In seeking the “least-cost, best-fit” procurement as required by the Commission, PG&E has an extensive bid review process including review of market valuation, portfolio adjusted value, project viability, RPS goal requirements, supplier diversity, credit and counterparty concentration risks, as well as any proposed modifications to terms and conditions of the standard contract documents. PG&E needs 60 days alone to do the project evaluations and create the shortlist. PG&E would then need an additional 60 days to prepare the advice letter filing summarizing this information for all of the short-listed offers. Thus, PG&E proposes that any deadline to submit a shortlist advice letter be set no earlier than 120 days following the close of bidding in the solicitation.

IV. THE COMMISSION SHOULD COMMIT TO TIMELY DISPOSITION OF SHORTLIST FILINGS AND SHOULD NOT PROLONG THE REGULATORY REVIEW PROCESS BY REQUIRING A TIER 3 PROCESS.

PG&E does not support the proposal to modify the RPS Solicitation shortlist review from a Tier 2 to a Tier 3 advice letter process. Nothing in the record of the proceeding suggests a need for this change or that the current Tier 2 advice letter process is inadequate. Moreover, the change to a Tier 3 process adds an additional step of submitting a Draft Resolution for full Commission approval. Adding new regulatory steps to the solicitation process is contrary to the streamlining goal of the Staff Proposal and adds no additional transparency to the public. The parties to the proceeding already receive the Tier 2 advice letter filed by the IOUs, and the parties have an opportunity to protest the advice letter. The Energy Division also has existing authority under General Order 96-B to dispose of a shortlist advice letter designated by an IOU as Tier 2 by Commission Resolution if it believes the issues require more than a

technical/ministerial review.^{18/} In fact, PG&E’s 2012 RPS Solicitation shortlist advice letter, filed as a Tier 2 advice letter, was resolved by a formal Resolution rather than a staff-level disposition.^{19/}

More important than the specific tier of the advice letter filing is the timeliness of Commission disposition or resolution of the advice letter. For example, PG&E’s 2012 RPS Solicitation shortlist advice letter was only final and non-appealable in January 2014, which was about six months after filing of the original advice letter and more than a year after issuance of the Solicitation.^{20/} In the case of such a prolonged regulatory review of the shortlist, PG&E has had to begin negotiations and, in some cases, execute PPAs prior to the approval of the shortlist. Under the Staff Proposal, PG&E would be unable to execute PPAs from the solicitation prior to approval of the shortlist.^{21/} If the additional Tier 3 process is allowed to further delay an already long pendency period for the shortlist, the IOUs would have difficulty completing negotiations on PPAs prior to the one-year expiration of the shortlist. This risk is heightened to the extent the Commission were to reject or modify the shortlist. Given the Commission’s goal of streamlining and the significant past timeframes for approval of shortlists,^{22/} PG&E recommends the Staff Proposal be modified to retain the initial Tier 2 designation of the shortlist advice letter and to

^{18/} General Order 96-B, Rule 7.6.1 (“Whenever [disposition of a Tier 1 or Tier 2 advice letter] requires more than ministerial action, the disposition of the advice letter on the merits will be by Commission resolution . . .”).

^{19/} Resolution E-4631.

^{20/} See *id.*

^{21/} Staff Proposal at 12.

^{22/} PG&E notes that the initial goal of this reform proceeding appeared to be to significantly shorten and streamline the “back-end” approval process for individual PPAs in exchange for a more robust “front-end” review of the shortlist. PG&E continues to disagree that such a reform is workable or desirable. However, it is worth noting that the reform proposal has evolved to reduce or eliminate most of the purported “back-end” streamlining while retaining a lengthy “front-end” review of the shortlist. The end effect is to complicate and extend the existing procurement process rather than to streamline and simplify it.

state the Commission's intention to dispose of the shortlist advice letter within the initial 30-day review period provided by General Order 96-B.^{23/}

V. EXPEDITED REVIEW OF SHORT-TERM RPS CONTRACTS SHOULD BE VIA AN OPTIONAL TIER 1 ADVICE LETTER PROCESS.

The Staff Proposal makes the following proposal with regard to expediting Commission approval of short-term^{24/} (*i.e.*, those of less than five years in duration) RPS purchases and sales transactions:

[I]f an IOU obtains Commission approval in its annual RPS procurement plan for a pro-forma contract for short-term transactions..., an IOU can execute contracts and receive cost recovery through the Energy Resource Recovery account (ERRA), similar to the current procedure for short-term non-RPS procurement. Under the staff proposal, the only filing required would be a Tier 1 quarterly advice letter filing that identifies the type, term, and cost of the transactions.^{25/}

PG&E is concerned that the language in the Staff Proposal could be interpreted in a number of different ways and may lead to confusion. First, it is unclear whether Staff proposes that a PPA must be unchanged from the approved pro-forma contract in order to be eligible for expedited approval. On one hand, the Staff Proposal states that the pro-forma PPA would include "standard modifiable . . . terms,"^{26/} suggesting that such terms could in fact be modified. On the other hand, Table 1 of the Staff Proposal states that a "prerequisite" for streamlined review are contract terms that are the "short-term pro-forma contract pre-approved in an IOU's annual RPS procurement plan."^{27/} The Staff Proposal seems to recognize this ambivalence

^{23/} See General Order 96-B, Section 7.5.2.

^{24/} In its Bundled Procurement Plan, PG&E defines conventional short-term contracts as contracts with a term of one year or less and medium-term contracts as contracts with a term greater than one year but less than five years. Renewable contracts are an exception to this rule, with anything under 10 years in duration considered short-term. For purposes of these comments only, PG&E will refer to RPS transactions of less than 5 years as "short-term" for ease of discussion.

^{25/} *Id.* at 15.

^{26/} *Id.*

^{27/} *Id.* at 16.

toward modifications when it asks “what modifications, if any, to the contracts should be allowed and what approval process, if any, should apply to such modifications.”^{28/} PG&E does not support expanding the current use of “non-modifiable” terms and conditions in RPS PPAs. Even in short-term transactions, parties need the flexibility to be able to contract around project-specific issues and to ensure that customers receive the greatest value from the transaction. Commission-prescribed terms and conditions will make deriving such value extremely difficult, especially as such non-modifiable terms become stale in current market conditions. Thus, the only terms and conditions that should remain unmodified in a short-term PPA or Purchase and Sale Agreement (“PSA”) submitted for expedited review should be those “non-modifiable” terms and conditions already adopted by the Commission.

Second, the Staff Proposal appears to suggest a streamlined approval process analogous to that used for short-term conventional power PPAs, but the proposal itself does not fully describe that process or address the key issue of up-front standards. PG&E’s Conformed Bundled Procurement Plan (“BPP”), which is adopted in the Long-Term Procurement Plan proceeding, contains up-front, pre-approved standards for the procurement of short-term conventional energy. PG&E’s most recent BPP provides that conventional power contracts with a duration of five years or greater “are approved by the Commission either through an application or advice letter process.”^{29/} However, the BPP provides PG&E with authority to execute short-term conventional PPAs that comply with certain up-front standards and are procured through approved processes. These standards are summarized in Table II-5 of the BPP, and include the use of a competitive solicitation meeting certain requirements and bilateral

^{28/} *Id.* at 17.

^{29/} BPP, Sheet No. 40. PG&E’s most recently BPP was approved by Resolution E-4544. The BPP is available at:
[https://www.pge.com/regulation/Ref/Bundled%20Procurement%20Plan%20\(Public\).pdf](https://www.pge.com/regulation/Ref/Bundled%20Procurement%20Plan%20(Public).pdf).

contracting.^{30/} These short-term, pre-approved transactions are reported in PG&E's Quarterly Compliance Report ("QCR") advice filing.

Thus, to the extent the Staff Proposal means to create an analogous process for short-term RPS transactions, it seems the proposal would be to create similar up-front standards to be included in each IOU's respective BPP, with a reporting of such transactions in the QCR filings. The QCR may be the same as the reference in the Staff Proposal to "a Tier 1 advice letter filing that identifies the type, term, and cost of the transactions."^{31/}

However, it may be more difficult to establish clear and objective pre-approved, up-front criteria for short-term RPS transactions, which are products that are not as standard as short-term conventional energy transactions. It appears that the Staff Proposal is to use the criteria set forth in Table 1 of the Staff Proposal as the up-front standards for short-term RPS transactions. If so, the Staff Proposal should be revised to make clear that Table 1 constitutes up-front standards that, if met, constitute pre-approved cost recovery for transactions executed under the streamlined process. Additionally, Table 1 should be clarified to ensure that the criteria are adequately objective. For example, bilateral contracts would have to have an equivalent or better net market value when compared to recently executed contracts for "similar products and term."^{32/} An IOU should not face risk of a disallowance in the QCR or ERRA because it viewed a "similar product and term" differently than Staff. The standard should be described more objectively; for example, the standard could be revised to require that comparator contracts be for the same product content category. Similarly, the standard that the executed contract "be consistent with RPS Procurement Need and Procurement Authorization as approved in RPS procurement plan" is not adequately objective to provide an up-front standard. The same defect occurs with the ambiguous reference to the approved pro-forma contract – as noted above,

^{30/} BPP, *supra*, Sheet Nos. 34-35.

^{31/} Staff Proposal at 15.

^{32/} *Id.* at 16.

modifications must be allowed to the form contracts, and so the up-front standard would need to provide objective up-front criteria for when these modifications are within the pre-approved procurement authority. Finally, the “data adequacy” field in Table 1 suggests that requirements are yet to be developed; such deferred standards clearly do not provide up-front criteria that IOUs could rely upon for executing contracts.

Because PG&E believes that it may be difficult for parties to agree on clear, objective, and up-front standards for short-term RPS Procurement, PG&E supports instead allowing, but not requiring, IOUs to submit qualifying short-term RPS contracts for Commission approval via a Tier 1 advice letter process. Such a process would allow an opportunity for the Commission and stakeholders to review each such contract on an individual basis, but would signal the Commission’s general intent to streamline the approval of such qualifying contracts.

Regardless of the form of streamlining the Commission ultimately adopts, it should preserve the alternative option of IOUs to submit short-term contracts for approval by Tier 3 advice letter. This is particularly necessary if the Commission adopts a process that would allow for any type of after-the-fact reasonableness review of contracts. For example, if the Commission were to simply review short-term RPS contracts in the ERRA compliance proceeding, PG&E’s experience has been that annual ERRA compliance filings may not be approved until more than one year after they are filed. Thus, a contract executed just after the filing of an ERRA compliance filing may have no assurance of cost recovery for two years, or even longer, if it were required to be reviewed in ERRA. Thus, PG&E requests that IOUs have discretion to seek cost recovery for any short-term RPS contract through either a Tier 1 advice letter, if the transaction meets certain criteria, or, in any case, through a Tier 3 advice letter filing.

VI. CONTRACT AMENDMENT STANDARDS OF REVIEW SHOULD DEPEND ON THE VIABILITY OF THE ORIGINAL CONTRACT.

Under the Staff Proposal, any contemplated contract amendment that is not competitive with the most recent RPS solicitation shortlist or RPS PPAs executed in the preceding twelve months could not be executed and submitted via advice letter, but instead would have to be bid

as a new project in the next RPS solicitation.^{33/} To the extent this requirement is adopted, it should be applied only to contracts where strong evidence indicates that, in the absence of the sought-after amendment, the original contract would become unviable and be terminated. In such a case, it may be appropriate to compare the proposed amendment against contemporaneous offers for other projects.

However, where the developer of a viable RPS contract has identified an amendment that would increase the value of the project both to an IOU's customers and to the developer, the amendment should not be compared against other new RPS bids. Rather, the better analysis in such a case is whether the amendment increases value for customers relative to the contractual commitment that has already been executed by the IOU and approved by the Commission. If customers would benefit from the amendment, the Commission should approve it, even if contemporaneous offers for other RPS projects might be more competitive because those contemporaneous offers are not the alternative to approving the amendment. If the Commission instead adopts the Staff Proposal, PG&E's customers may have to forego the value they could obtain from an amendment simply because the developer would be unwilling to risk losing the "bird in the hand" (the executed/approved original contract) through a re-bidding and re-evaluation process. In summary, the Commission should evaluate and approve amendments based on the alternative to that approval; when that alternative is the continuation of a second-best contract, the amendment should be evaluated with that in mind.

VII. THE COMMISSION SHOULD PRESERVE IOUS' ABILITY TO EXECUTE AMENDMENTS DURING ROUTINE ADMINISTRATION OF CONTRACTS AND TO REPORT THOSE AMENDMENTS IN THE QCR RATHER THAN VIA AN ADVICE LETTER.

The Staff Proposal appears to recognize only two potential processes for review of proposed RPS contract amendments: (1) through re-bidding of the project into the next RPS solicitation if pricing is not competitive; or otherwise (2) through a Tier 2 advice letter. This

^{33/} *Id.* at 24.

proposal fails to recognize the long-established practice of review of amendments made during the course of routine contract administration through the QCR filings. The Commission has approved PG&E's approach to such routine amendments as part of PG&E's RPS Procurement Plan, most recently in 2013.^{34/} The broad language in the Staff Proposal could lead to an unworkable and likely unintentional interpretation that any routine change to an RPS contract, no matter how ministerial, would have to be submitted through an advice letter.

VIII. THE COMMISSION SHOULD NOT PREJUDGE THE OUTCOME OF THE PROCUREMENT EXPENDITURE LIMITATION PROCEEDING AS PART OF THIS STAFF PROPOSAL.

One new feature of the Staff Proposal is the addition to each of the Standards of Review of a new line item related to "cost containment."^{35/} In each instance, one criterion of approval for each category of RPS transactions would be whether there is "[c]onformance with the expenditure limitation upon issuance of the Commission decision on Cost Containment."^{36/}

PG&E urges the Commission to remove this specific line item from the Standards of Review for two reasons. First, the Commission is in the process of implementing the RPS statute's requirements regarding a procurement expenditure limitation ("PEL"),^{37/} and has stated an intention to ultimately issue a Decision on the matter. Referencing the PEL in this Staff Proposal is premature, given that the Commission has not formally adopted a PEL, and also is unnecessary because if the Commission does adopt the PEL in a Decision, those requirements will be incorporated by reference into the Standards of Review in the line included in each table for "Consistency with Commission Decisions."^{38/}

^{34/} PG&E Final 2013 RPS Procurement Plan, Dec. 4, 2013, at 110-111.

^{35/} See Staff Proposal at 17, 21, 22, 26, 29, and 32.

^{36/} *Ibid.*

^{37/} See Cal. Pub. Util. Code §399.15(c)-(f).

^{38/} While this category lists a number of specific Commission Decisions, it makes clear that the listed Decisions are illustrative only and are not exclusive. The Standard generally is that the procurement is "consistent with relevant Commission decisions," which would include any future PEL Decision.

Second, the new language in the Staff Proposal could be interpreted to mean that an IOU could not voluntarily execute and submit for Commission approval any RPS transaction that would exceed an established PEL. That interpretation would be contrary to and preempted by the RPS statute which gives an IOU discretion to discontinue procurement above a PEL, if certain conditions are met, but does not prohibit an IOU from proposing such procurement.^{39/}

IX. THE COMMISSION SHOULD MAKE ADDITIONAL MODIFICATIONS TO THE STANDARDS OF REVIEW TO ENSURE THEY ARE OBJECTIVE AND USEFUL.

A. Consistency with RPS Net Short – How to Apply to Individual Contracts.

Each IOU's RPS Plan establishes the relationship between the IOU's RPS Net Short and the IOU's Procurement Goal for each solicitation. By approving each IOU's RPS Plan, the Commission also explicitly approves this relationship. The Commission therefore needs only to reference a Procurement Goal set forth in each IOU's RPS Plan when determining an individual contract's consistency with its RPS net short. New contract volumes that, when combined with volumes from other bilateral or solicitation contracts signed since the most recent RPS Plan,^{40/} are less than or equal to the Procurement Goal should be deemed consistent with the RPS net short.^{41/} Similarly, contract amendments that increase a contract's expected deliveries should be deemed consistent if the incremental volumes, when combined with other volumes signed since

^{39/} Cal. Pub. Util. Code § 399.15(f) ("If the cost limitation for an electrical corporation is insufficient to support the projected costs of meeting the renewables portfolio standard procurement requirements, the electrical corporation **may** refrain from entering into new contracts or constructing facilities beyond the quantity that can be procured within the limitation, unless eligible renewable energy resources can be procured without exceeding a de minimis increase in rates, consistent with the long-term procurement plan established for the electrical corporation pursuant to Section 454.5.") (emphasis added). Note the use of "may," which is permissive statutory construction, rather than the mandatory "shall."

^{40/} Total volumes considered in this context should not include volumes from mandated procurement programs, including the Renewable Auction Mechanism, the Feed-in Tariff program, and utilities' photovoltaic programs, as the RPS net short calculation already incorporates volumes from these programs.

^{41/} Implicit in this concept is that while a particular RPS Plan may prefer volumes that deliver in certain periods, a Procurement Goal, expressed in GWh, may be met by earlier-delivering volumes that are fully bankable and thus can be used to meet a future RPS Net Short.

the RPS Plan, fit into the total Procurement Goal. Contract amendments that do not change expected contract deliveries or that decrease contract deliveries should automatically be deemed consistent with the RPS net short.

Contract volumes that exceed the Procurement Goal may also be deemed consistent with the RPS net short if the IOU demonstrates, and the Commission agrees, that significant project, forecasting, or other changes have impacted an IOU's RPS net short since it last filed its RPS Plan.

B. RPS Net Short Calculation, Net Market Value, and Project Development Updates for Advice Letter and Application Filings

The Staff Proposal would further require the IOUs to (1) update RPS net short calculations one week prior to filing an advice letter or application, (2) submit to Energy Division updated project development assessments on a monthly basis while the advice letter or application is pending, and (3) update net market value calculations one week prior to filing an advice letter or application.

Updating an RPS net short calculation within one week prior to filing may be infeasible depending on what elements of the calculation require updating and is irrelevant to the decision an IOU made at the time of execution. Pursuant to existing Commission direction, PG&E currently files its most recently updated RPS net short calculation with advice letters. However, as part of this reform, the Commission should require that the RPS net short calculation reflect the most recent data available at the time that the contract was executed. Specifically, the Commission should first ask if the proposed procurement is consistent with the approved procurement goals in the applicable RPS Procurement Plan. If not, then the Commission should review whether the most updated net short calculation at the time of execution demonstrated sufficiently changed circumstances that justified exceeding the approved procurement goal. Data available to the IOU at the time it entered into a contract with a supplier is most appropriate because it reflects the information available to the IOU when the business decision to sign a contract was made.

PG&E is concerned with the additional proposal that it file updated project development assessment reports on each pending transaction on a monthly basis. PG&E has been working with Energy Division to develop a database on the IOUs' RPS portfolios with the express intent that this database would replace a multitude of formal and ad-hoc reporting requirements. The Staff Proposal should be revised to make clear that the Commission will first look to this RPS database to meet its data needs with regard to the project development status of pending projects.

Finally, PG&E has concerns with the requirement that it update the net market value of a particular PPA and all other transactions in the applicable cohort within one week of filing.^{42/} The current net market value of all bids at the time of filing is not relevant to the reasonableness of a decision that an IOU made to execute a contract at some prior point in time, nor may it be possible from an administrative point of view to update all of the cohort offers within the week of filing.

C. Non-Standard Power Purchase Agreements

The Staff Proposal proposes separate Standards of Review for PPAs that would not meet the standards included in other categories of contracts ("Non-Standard PPAs"). As examples, an IOU may seek approval of a PPA that does not compare favorably in terms of net market value with others in the same cohort, or may propose a technology that is not commercially proven. Additionally, Non-Standard PPAs would include contracts that are expected to provide more than one percent of the IOU's total bundled sales in any year during the first 5 years of the PPA's term.^{43/}

In addition to meeting the higher Standards of Review, the Staff Proposal would require IOUs to seek Commission approval of Non-Standard PPAs through a non-confidential application rather than by Tier 3 advice letter.

^{42/} See, e.g., Staff Proposal at 20.

^{43/} Staff Proposal at 28, fn. 25.

The Standards of Review proposed for Non-Standard PPAs would present such significant hurdles as to make it highly unlikely that any such PPA would be executed, reducing the supply of projects available to IOUs and therefore tending to increasing the cost of RPS implementation to retail customers. The distinction between the process for Non-Standard PPAs and the others would be critically important given the major differences in approval processes, but the Staff Proposal has not adequately defined what types of technology would be considered “not commercially proven.” The lack of a clear definition will create uncertainty in the market, in contrast to the stated goals of the proceeding. If, notwithstanding the major disincentives that would be established by the Staff Proposal, an IOU proposed a Non-Standard PPA, the requirement to use an application, along with the potential for hearings, would likely increase the timeline for project approval, rather than accomplish the streamlining sought by the Staff Proposal.

Nothing in the Staff Proposal demonstrates why the existing RPS Procurement process is inadequate for addressing such Non-Standard PPAs. In fact, the existing Advice Letter process requires a full examination of consistency with the RPS net short, of the project’s viability (including an evaluation of the level of commercialization of the technology), and of the reasonableness of the PPA’s price and value. Because existing Commission precedent allows an IOU to elect to submit a particular PPA by application on a case-specific basis, there is no need to establish rigid categories of contracts that must, in all cases, be so filed. For these reasons and others discussed below, the proposal should be eliminated as unnecessary and contrary to the goals of the Staff Proposal.

1. The terms of power purchase agreements should be confidential, regardless of how they are filed.

The market sensitivity of PPAs has been subject to lengthy litigation and a string of Commission decisions,^{44/} and these rules should not be reversed without a strong justification

^{44/} See, e.g., D.06-06-066 as modified by D.07-05-032.

and adequate notice to and comments from all affected stakeholders. The proposal to make all terms of Non-Standard PPAs public, regardless of the market sensitivity of that information, is directly contrary to prior Commission decisions implementing state statutes. Because non-market participants, and the eligible Reviewing Representatives of market participants, are able to receive the confidential terms and conditions of PPAs upon the signing of reasonable non-disclosure agreements, there is no need to make such drastic changes to the current treatment of confidential PPA terms. If the Commission nonetheless elected to move forward with this proposal, the change should first be vetted with all parties to the Confidentiality Rulemaking, R.05-06-040, so that all impacted stakeholders are able to comment on the proposal.

The Commission should maintain the existing rules, as specified in the “IOU Matrix” attached to D.06-06-066, regarding what information from the PPA should be filed in the public portions of filings seeking PPA cost recovery.

2. Treatment of projects with multiple contracts for total facility capacity and projects with contracts for multiple phases.

In order to provide as much certainty as possible regarding the review process for any single PPA, the Commission should not, if it adopts this proposal in any form, aggregate multiple PPAs, whether they are with the same or different counterparties, to establish whether one specific PPA must be filed as Non-Standard. Each PPA should be evaluated as a single and separate transaction.

3. Appropriateness of requiring large-volume contracts to be filed by application.

PG&E does not support the requirement that large-volume contracts be filed by application. The volumes that would be provided by a particular PPA should be irrelevant to the Commission’s review of the reasonableness of the contract so long as those volumes are supported by the IOU’s RPS net short calculation. Moreover, the requirement to file such contracts by application would very likely extend the contract review timeline, which contradicts the Commission’s streamlining and market certainty goals. Nevertheless, if the Commission

continues to believe such a requirement is necessary, PG&E would propose a more appropriate threshold could be whether a particular contract, standing alone, exceeds an IOU's total procurement target for a given solicitation.

X. CONCLUSION

PG&E appreciates the opportunity to provide comments on the Staff Proposal and looks forward to working with the Commission and other stakeholders to meet the Staff Proposal's goals of increasing the efficiency of the RPS procurement process.

Respectfully Submitted,

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Dated: May 7, 2014

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing "PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) OPENING COMMENTS ON APRIL 2014 STAFF PROPOSAL FOR RPS PROCUREMENT REFORM," dated May 7, 2014. The statements in the foregoing documents are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th of May, 2014 at San Francisco, California.

/s/ Sandra J. Burns

Sandra J. Burns
Principal
Pacific Gas and Electric Company